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No. 419

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

PATRICIA DEALESANDRO,

Petitioner,

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITIONER

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This reply is addressed to the issue of failure by the arresting officer to advise petitioner of her constitutional rights, our contention being that the jury should have been instructed as to the necessity of making a finding whether such advice or warning had been given as a prerequisite to considering petitioner's allegedly false exculpatory statements made to the arresting officer (Pet. Cert., Questions Presented 1, 2, 3, and pp. 13-14, 20-21, 22, 23-25, 26-31; Br. in Opp., pp. 5-6).

First, we do not understand the sentence in the Brief in Opposition, pages 5-6, that "The admissibility of petitioner's remarks—the context in which the question of effective warning ordinarily has relevance—is not disputed". If by this the Government means that in any

significant sense we are not disputing the admissibility of petitioner's alleged self exculpatory remarks, the Government is incorrect, because the whole theme of this portion of the presentation in our petition for certiorari is that the remarks were not admissible. If the sentence above quoted from the Brief in Opposition has some other meaning, we are unable to understand what the Government is driving at, and we submit that the quoted sentence does not enhance the persuasiveness of the Government's position.

More important, we must reply to the argument (Br. in Opp., p. 6) that (we paraphrase) petitioner herself wanted the jury to know of her statements to the arresting officer; in effect the Government is arguing that we are precluded by some kind of waiver or estoppel. This argument of the Government is unsound (1) because the items in question first came into the trial proofs on the Government's direct case (testimony of FBI Agent Campbell—36a), (2) because even though it is true that petitioner took the stand in her own defense she was surely entitled to try to meet Agent Campbell's testimony, (3) also because in her own direct testimony petitioner dealt with this phase solely in terms of her having made protestations of innocence to Agent Campbell (67a-68a), (4) also because the only allegedly false exculpatory statements (made to Agent Campbell) which petitioner herself testified to were the product of the prosecutor's cross examination of petitioner (89a-93a), and (5) above all because the only specific instance mentioned by the Government of allegedly false exculpatory statements made by petitioner to the arresting officer is her explanation of her departure from New York (Br. in Opp., p. 6, fn. 2)—and to regard this last as being entitled to weight under the "false exculpatory statements" principle is manifestly unfair in the circumstances of this case because such would result in *doubling* the Government's unfair advantage since the

Government is also relying on the evidence of alleged flight anyhow as an important part of the substantive corpus of the trial proofs against petitioner.

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari should be granted*.

Respectfully submitted,

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Attorneys for Petitioner.

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* In view of the statements in our petition for certiorari, pages 5-6, concerning petitioner's pregnancy and her then incarceration (bail pending certiorari having been denied by both of the Courts below at the request of the United States Attorney for the Southern District of New York), we respectfully ask the Court's leave to note our profound appreciation to the Solicitor General for having consented, on grounds of humaneness, to our recent application for bail pending certiorari, which was granted by Mr. Justice Harlan.